

EXHIBIT 3

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 05-17923 (ASH)
. (Jointly Administered)
.
DELTA AIR LINES, INC., et al, . White Plains, New York
. Monday, May 21, 2007
Debtors. .
.

TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE ADLAI S. HARDIN
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commence at 4:51 p.m.)

2 (Call to order of the Court.)

3 THE COURT: Okay. Do I have a sheet on this? Okay.

4 Who's on with regard to Delta?

5 MR. WILES: Your Honor, this is Michael Wiles, from
6 Debevoise & Plimpton, on behalf of Delta.

7 THE COURT: Okay.

8 MR. HANSEN: Your Honor, it's Kristopher Hansen, with
9 Stroock & Stroock & Lavan, on behalf of Delta.

10 THE COURT: Okay.

11 MR. BOTTER: Good afternoon, Your Honor. David Botter
12 and Mitchell Hurley, from Akin, Gump, Strauss, Hauer & Feld, on
13 behalf of the Post-Effective Date Committee.

14 THE COURT: Okay.

15 MR. SMOLEV: Your Honor, for DFO Partners, Richard
16 Smolev of Kaye Scholer. We are in TIA/SLV Objection 1.

17 THE COURT: Okay.

18 MS. FENNING: Your Honor, Lisa Fenning of Dewey
19 Ballantine, on behalf of Northwestern Mutual Life. We are the
20 claimants on the TIA Objection 2.

21 MR. ELLIOTT: Your Honor, Mark Elliott and Mark Busey
22 (phonetic), for the Wilmington Trust Company and Cargill, SLV
23 plaintiffs.

24 THE COURT: Okay. And which objection? One or two?

25 MR. ELLIOTT: One, Your Honor.

1 THE COURT: Okay.

2 MR. EDELMAN: Good afternoon, Your Honor. This is
3 Michael Edelman, along with my partner, John Bogaard, from
4 Vedder Price. We're here for Strategic Value Partners on TIA
5 SLV No. 1, and Bank of America, on TIA SLV No. 2.

6 THE COURT: Okay.

7 MR. CROWLEY: Your Honor, Leo Crowley, Eric Fishman
8 and Margot Erlich, from Pillsbury, Winthrop, Shaw & Pittman,
9 for the Bank of New York, as Indenture Trustee, and we're here
10 on two of the aircraft and Objection No. 2.

11 THE COURT: Okay. Is that everybody?

12 MS. SPRINGER: No, Your Honor. This is Claudia
13 Springer, and with me is my partner, Kurt Gwynne. We're on for
14 PNC Leasing. We filed an administrative brief in the case.

15 THE COURT: Okay.

16 MR. PARTEE: And, Your Honor, Peter Partee, from
17 Hunton & Williams, here on behalf of Verizon, owner
18 participants. We're also involved in the three respective
19 objection (indiscernible).

20 MR. ROSENZWEIG: Your Honor, it's David Rosenzweig of
21 Fulbright & Jaworski on behalf of BNY, as owner and
22 participant. We also filed amicus papers on -- over the lease
23 objection.

24 MR. TORF: Your Honor, this is Jason Torf, appearing
25 on behalf of ALF5, LLC, with respect to two tail numbers

1 indicated by Objection 5(d). We came in late, and did not file
2 an amicus on one and two, but are obviously interested parties
3 here.

4 THE COURT: All right.

5 MR. DOSHI: Good afternoon, Your Honor. Amish Doshi,
6 with Day Pitney (sic), on behalf of Fifth Third Bank and the
7 Fifth Third Leasing Company, Inc. We're not part of one and
8 two, but we're a party in interest in the objection that's been
9 filed with respect to our claims in 5(f).

10 THE COURT: Okay.

11 MR. CALIFANO: And, Your Honor, Tom Califano and Vince
12 Roldan, from DLA Piper, on behalf of Marriott, who is also an
13 owner participant.

14 MR. MARGOLIN: Your Honor, Jeffrey Margolin, from
15 Hughes, Hubbard & Reed, representing DaimlerChrysler, a party
16 in interest, and (indiscernible).

17 MR. KANOWITZ: This is Richard Kanowitz, Your Honor,
18 on behalf of certain Trilogy entities. We, likewise, represent
19 the owner participants in Objections 3 and 5.

20 THE COURT: Okay. Is that it? Well, that's a fine
21 big group.

22 Mr. Wiles, why don't you start the conversation and
23 tell me where we are?

24 MR. WILES: Thank you, Your Honor.

25 I got a call last week from your clerks, both from

1 Rosemary and from Melanie, asking if we thought it would be
2 useful to have a conference to discuss whether anything
3 remained to be done on Test Cases 1 and 2, with what we
4 anticipated. I know a lot of people on the phone are more
5 interested in what we're going to do with all of the other
6 TIA/SLV objections that we have, and I don't anticipate trying
7 to address any of that today. A telephone conference seems
8 like an unruly and disorderly way to do that.

9 I asked the Court -- the scheduling clerk this morning
10 if there was a date when we might be able to have such a
11 conference to discuss broader issues and scheduling of what
12 issues we're going to take up next and how we're going to do
13 all this, and tentatively, she's told me June 6th, so I will be
14 sending a notice out to that and back.

15 But I did want to take the Court up on the offers that
16 Rosemary and Melanie, I think, last week, to at least tell you
17 what the parties to Test Cases 1 and 2 thought as to whether
18 there was something left to be done on those particular
19 objections.

20 THE COURT: Yes. I was concerned that I hadn't at all
21 covered the waterfront, and I probably haven't, in my case, to
22 get out a decision that I thought covered the -- hopefully the
23 principal issues, but tell me if I've let you down.

24 MR. WILES: You certainly haven't let us down,
25 although I would have preferred to see rulings in my favor

1 across the board, but on Test Case 1, which is the one that I
2 speak for Delta on, there is an issue that I don't think you
3 needed to reach in light of what you ruled, since you ruled, I
4 guess, for the objectors. But it was the issue of if there had
5 been a TIA claim, would the SLV claim have had to be reduced,
6 and I think, on Test Case 2, I have a conflict, so I have to
7 defer to Mr. Hansen to discuss the extent to which that issue
8 remains open on Test Case 2.

9 THE COURT: In other words, the issue is -- let me
10 just see if I understand it. In a situation where there had
11 been a TIA claim, for some reason, that did not trigger an SLV
12 claim, and the TIA claim had been paid, would that then reduce
13 the amount of the SLV claim pro tanto? Is that the issue?

14 MR. WILES: Yes. I think I would put it slightly
15 differently. We have TIA claims and SLV claims, so the issue
16 is -- I think I'll let Mr. Hansen speak further. But to the
17 extent that you've ruled that the TIA claim isn't wiped out,
18 the other half of the issue is that the SLV claim needs to be
19 adjusted.

20 MR. HANSEN: That's right, Your Honor. It's Kris
21 Hansen at Stroock. And with respect to Test Case 2, you have
22 (indiscernible) with respect to Tail No. 182DN, which was one
23 of the Bingham termsheet claims, and with respect to that
24 ruling, you had found that our objection, Delta's objection to
25 the TIA claim there was overruled. And so, in that instance,

1 if there was a claim on behalf of the TIA that survived, that
2 SLV would have to be adjusted to the extent there was going to
3 be a payment with respect to the TIA.

4 MR. EDELMAN: Your Honor, this is Michael Edelman from
5 Vedder Price.

6 I actually think that you have reached that ruling.
7 In your decision, you held that based upon the undisputed facts
8 of the case, the SLV readjustment provision of the
9 participation agreement is not applicable. I think that's at
10 twelve. And I think that reading closely your decision, you
11 have -- or you reason that because prior to the bankruptcy, the
12 owner/participant did not demand payment under the TIA, that --
13 I read that as the timing of the maturity of the SLV claim gave
14 rise to the fact that there was no ability for a later
15 readjustment, if a TIA claim, where (indiscernible). So I
16 think you have made a ruling on the issue that the debtor
17 counsels have just stated.

18 THE COURT: Okay. I think you -- I think Mr. Edelman
19 is right, but I want to make sure that I really understand the
20 facts. My understanding in Point C on the last page of my
21 decision concerning Tail No. 182DN was that there was no SLV
22 claim on that plane, one of what was it, eighty-nine planes
23 that were the subject of a settlement agreement, that resulted
24 in an agreement that Delta would allow a claim in an amount
25 calculated without any reference to SLV. That was the

1 predicate of my ruling on 182DN, that there was no SLV claim
2 and no claim calculated or, quote, "determined by reference
3 to," stipulated loss value.

4 That being the case, construing the agreement, the
5 TIA, as written, there was no bar to a TIA claim, but there's
6 also no SLV claim.

7 MR. HANSEN: Your Honor, it's Kris Hansen at Stroock
8 again.

9 We actually have a point that we wanted to raise to
10 Your Honor, as well with respect to Point B of your decision on
11 Tail 182DN. The termsheet actually has a provision in it that
12 described a calculation of pre-petition damage
13 claims/unsupported claims. In point one of that, it states
14 pretty clearly that in the case of an aircraft lease, and the
15 way you get to the claim is by starting from the stipulated law
16 and value, and it cites (indiscernible) in there a couple of
17 times, so I think that, you know, Delta's position with respect
18 to that is to say that the claims with respect to 182DN under
19 their termsheet are clearly calculated with respect to the
20 stipulated loss value.

21 MS. FENNING: Your Honor --

22 THE COURT: Okay.

23 MS. FENNING: This is Lisa Fenning, for Northwestern
24 Mutual on Number 2.

25 Our argument was that the termsheet was a deal that

1 was contrary to the terms of the operative documents and,
2 therefore, it could not, as a matter of contract law or of
3 communal law, qualify as an SLV claim that's in the meaning of
4 the operative document, even if it mentioned the word SLV.

5 And by the way, I would note, Your Honor, that we were
6 quite concerned with the discussion of TIA Claim No. 2 because
7 you mentioned, in Footnote 3, that you did not have access to
8 the operative documents. We, in fact, submitted all of the
9 relevant operative documents under seal. You signed an order
10 allowing us to do so. We submitted a batch of copies on the
11 open record, and we're quite concerned that perhaps you were
12 not aware that you actually had all the documents, because you
13 indicated that you couldn't refer to them or analyze them in
14 reaching the ruling.

15 THE COURT: Okay. Well, I said what I said in
16 Footnote 3, and I didn't have in front of me, as I was working
17 on this, those documents. In any event --

18 MS. FENNING: Well, they were submitted to the Court,
19 Your Honor, and you have a full set of the relevant documents,
20 and we had urged that you look at the documents as a whole, and
21 we're concerned that that may not have happened.

22 THE COURT: Well, let me ask you this. Is there
23 anything in my ruling that you think would be different, had I
24 looked at the documents?

25 MS. FENNING: Yes, Your Honor.

1 THE COURT: What?

2 MS. FENNING: We believe that you failed to take into
3 account the fact of the survival language, it was not discussed
4 in your ruling at all, which required that it be paid in full,
5 and that the TIA agreement survived the termination of the
6 agreement. We believe that you failed to fully consider the
7 effect on the interlocking provisions of how the payments are
8 to be made under the terms of the lease, and the fact that they
9 do call for payments in U.S. dollars, and I think it's just
10 important to read the document in substantial text, so that you
11 can see how they fit together and how they are negotiated, and
12 we're concerned the conclusions were being drawn without full
13 consideration of the documents, because you were not apparently
14 aware that you, in fact, have the full set of documents before
15 you.

16 THE COURT: Let me ask this. If you were to submit a
17 further piece by way of a motion to reconsider, and by the way,
18 I welcome motions to reconsider, I always reconsider when I get
19 a motion to reconsider, but if you were to file a piece of
20 paper saying, Judge, please reconsider, and when you do,
21 consider these passages from these documents, would you quote
22 anything other than you did in your -- in the submission that I
23 saw?

24 MS. FENNING: Well, Your Honor, we're concerned that
25 you didn't read the submission that we made because we

1 repeatedly explained that we have submitted the operative
2 documents, and that raised concern when you did not mention
3 many of the provisions we cited to you in our brief, whether
4 you, in fact, had our brief in front of you at the time you
5 were working on the decision.

6 I'd be happy to do that, but I'm sure you can
7 appreciate my concern, because many subjects were not mentioned
8 here in your opinion.

9 THE COURT: Yes. Let me ask the question again,
10 because I think my question was unclear.

11 If you were to write a brief saying, Judge, please
12 reconsider, would you cite anything to me that you didn't cite
13 in the paper that I have already looked at?

14 MS. FENNING: In general, or specifically with respect
15 to quotations out of the document?

16 THE COURT: Would you quote anything from any of the
17 operative documents that you didn't quote already in the brief
18 that you submitted to the Court?

19 MS. FENNING: Probably, yes. We would have focused on
20 how some of the provisions link together with respect to the
21 calculations of the liquidated damages aspect of the TIA.
22 There would be a number of things.

23 We would also, more generally, have cited you to
24 Travelers Insurance Company, which is a Supreme Court case that
25 came down too late for us to include in our brief, given our

1 briefing deadline, which we think bears upon the -- directly
2 upon the issue of how the Bankruptcy Courts are supposed to
3 interpret documents and whether it's permissible to take into
4 account the fact that the interpretation that's occurring in
5 the Bankruptcy Court. Travelers, in our view, stands for the
6 proposition and it reiterates prior case law, but clarifying
7 that the Court must interpret contracts as if they are being
8 interpreted, in effect, in state court or other state court
9 standards, rather than importing a concept of allowability or
10 other bankruptcy concepts into the actual interpretation of
11 what the contract is saying.

12 THE COURT: Let me ask this.

13 MS. FENNING: And we urge that that be considered, as
14 well, and we do intend to bring a motion for reconsideration on
15 that ground.

16 THE COURT: Ms. Fenning, were you the party that made
17 the argument that I quoted at the top of Page 14, quote:

18 "The contention is that 'Section 6(c) of the TIA is
19 triggered only when the lessee actually pays all of
20 the SLV, or the termination value, or a payment
21 calculated with reference to either, in U.S.
22 Dollars.'"

23 MS. FENNING: Yes.

24 THE COURT: Okay. well, I think I've paid rather
25 close attention to your brief and to the provisions that you

1 quoted.

2 Okay. Going back to Mr. Hansen, I forget. The
3 termsheet was part of the exhibits. Is that correct? Hello?

4 MR. SMOLEV: Your Honor, this is Richard Smolev.

5 In the DFO exhibits that were the demonstrative aids,
6 a copy of the Bingham termsheet was included in that, with some
7 highlighted language.

8 THE COURT: This is the termsheet that governed 182DN?

9 MR. SMOLEV: Yes, sir.

10 THE COURT: Okay. Which of you is aggrieved by my
11 ruling under Paragraph C, as in Charlie, on Page 15?

12 MR. SMOLEV: Page what, Your Honor?

13 THE COURT: Fifteen. The last page of my decision.

14 MR. SMOLEV: Your Honor, the debtor and the committee
15 would be aggrieved by that ruling.

16 THE COURT: Okay.

17 MR. HANSEN: Yeah. That's our position, Your Honor.
18 The debtor would be aggrieved by that ruling.

19 THE COURT: Yeah.

20 MR. SMOLEV: And, Your Honor, if I might, this is
21 Richard Smolev for DFO. I don't know if this is the
22 appropriate time to talk about TIA/SLV Objection 1.

23 THE COURT: No, no, it's not. I'm trying to focus on
24 182.

25 MR. SMOLEV: Okay. No, no, no. But I do have a

1 comment with respect to where some of my tails rank in relation
2 to 182, but I will stand down if you want me to discuss all of
3 the concerns about Objection 1 at the same time.

4 THE COURT: I just want to know, what don't I have
5 right with regard to 182? Where did I miss the boat?

6 MR. HANSEN: Your Honor, it's Kris Hansen at Stroock
7 again.

8 I think that it was Exhibit 11, I believe, to our --
9 spoke to our objection, and if you look to Page -- you have to
10 go past the order that was previously entered with respect to
11 the termsheet. If you look to the actual termsheets themselves
12 --

13 THE COURT: Is that Exhibit 11?

14 MR. HANSEN: That is Exhibit 11. Yup.

15 THE COURT: All right.

16 MR. HANSEN: And as you go to Exhibit 1 of --

17 THE COURT: Wait. Wait a second. Exhibit 11, Page
18 what?

19 MR. HANSEN: Well, Your Honor, there's a number of
20 exhibits within Exhibit 11. If you go to Page 2 of the
21 restructuring termsheet, which is pretty far in --

22 THE COURT: Page 2 of the termsheet?

23 MR. HANSEN: Page 2 of the termsheet.

24 THE COURT: Okay.

25 MR. HANSEN: You'll see, in bold text, on the bottom

1 left of that page, the language, calculation of pre-petition
2 damage claim/unsecured claim.

3 THE COURT: Yeah.

4 MR. HANSEN: And if you look down, what that says is
5 that the debtor, the plan parties (sic), and the committee
6 agree that the plan parties will have an unsecured, pre-
7 petition claim for the deficiency amount shall be calculated as
8 follows (indiscernible).

9 If you look at 1(a), it says:

10 "In the case an aircraft lease, the sum of (i)
11 stipulated loss value, calculated as of the filing
12 date, pursuant to the existing lease, as if a payment
13 of stipulated loss value, as the case may be, were to
14 be made on such date."

15 So it's our position that that's, as you read
16 (indiscernible) loss value again, but that triggers the payment
17 plan, and now, in reference to stipulated loss value.

18 THE COURT: I see. I'm sorry. I'll have to look at
19 that again because I believe that must have gone over my head.
20 So just so I know where I'm looking, it's Exhibit 11, Page 2,
21 which is the termsheet, and it's Page 2.

22 MR. HANSEN: That's right, Your Honor. It's Page 2 of
23 the termsheet. And in Exhibit 11, your order entering a
24 process by which the termsheets will be -- and the termsheet
25 modifications be undertaken, and how people will enter into

1 deals with those (indiscernible), it's listed as Exhibit 1
2 within Tab 11.

3 THE COURT: What did he just say?

4 Say that again, will you please?

5 MR. HANSEN: Sure, Your Honor. My apologies. The
6 exhibits are a little cumbersome.

7 Page 10 of 11 (sic) is Delta's reply to Objection No.
8 2.

9 THE COURT: Oh, it's 10 of 11.

10 MR. HANSEN: At Tab 11.

11 THE COURT: Well, where in Tab 11 do you want me to
12 look?

13 MR. HANSEN: There is an Exhibit 1 within Tab 11.

14 THE COURT: Yeah?

15 MR. HANSEN: See, there's a piece of, you know, a tab
16 sticking out that says "Exhibit 1." When you flip to Exhibit
17 1, that's your order approving a modified termsheet and an
18 extension of the Section 1110 deadline with respect to the
19 eighty-eight aircraft.

20 THE COURT: Is the termsheet attached to Exhibit 1
21 part of Tab 11?

22 MR. HANSEN: Yes, it is.

23 THE COURT: All right. And it's -- I'll look at Page
24 2. Well, I'll look at it.

25 MR. HANSEN: Thank you, Your Honor.

1 MS. FENNING: Your Honor, this is Lisa Fenning.

2 I would call your attention to, also, the copies of
3 the proofs of claim filed by the Bank of New York. There were
4 submitted as part of our submission. The proof of claim does
5 not state on its face that it was an SLV claim, and that was
6 the basis for our argument as far as the face of the document
7 is concerned, but the gist of our argument was that the
8 termsheet that -- the termsheet deals with, contrary to terms
9 of the contract, the underlying operative document, and that,
10 as you note in your opinion, Delta acknowledges that the amount
11 calculated under the termsheet formula is far lower than any
12 SLV amount would ever be calculated on a lease.

13 And so the termsheets themselves are contrary to the
14 terms of the operative documents and would be prohibited by the
15 terms of the operative documents, as we set forth in detail in
16 our response. So that the mere fact that the termsheet has the
17 term SLV in it does not mean that the SLV calculated or
18 permitted or had contemplated, under the terms of the operative
19 document.

20 So we would urge that if you take a look at this issue
21 again, and we believe that you correctly decided it in the
22 first place, but if you look at this issue again, that you
23 consider whether the termsheets are, in fact, prohibited by the
24 operative documents themselves, and contrary to it.

25 THE COURT: Why are they prohibited?

1 MS. FENNING: As we set forth in our response, Delta
2 is not allowed to cut a deal with the debt on these claims to
3 keep the airplane, without the permission of the
4 owner/participant. The idea, the way these deals are
5 structured is that at the end of the day, there will be an
6 objective calculation of the claim value by a foreclosure sale
7 or an assumption of the continued operation under the existing
8 lease, turning it back over to the owner/participant at the end
9 of the lease, but under no circumstances under the terms of the
10 operative documents is Delta allowed to cut a new deal, a new
11 lease with the debt directly, by which it keeps the plane.
12 Delta keeping the plane under a new lease and paying the debt
13 is a prohibited outcome under the terms of the contract, just
14 for the very purpose that it would entirely skew and upset the
15 negotiated economics of the deal and the terms that the parties
16 agreed on up front.

17 So it cannot be said that a deal that is contrary to
18 the provisions of the contract constitute the calculation of
19 SLV within the meaning of these documents. So however they
20 want to -- whatever number they want to use to calculate their
21 claim, they can do that, but it doesn't make it qualify as an
22 SLV claim under the terms of the contract, and the number
23 doesn't bear the remotest relationship to what is on the SLV
24 table statement, you'll see attached to the lease when you look
25 at the operative documents. The number bears no relationship

1 to the number that would be across the page from the date -- of
2 the petition date or whatever comparable date you use to try
3 and determine what the appropriate SLV amount --

4 THE COURT: Ms. Fenning, that's very helpful. May I
5 try to articulate what you just said, so you will know whether
6 I got it?

7 MS. FENNING: Yes.

8 THE COURT: Okay.

9 MS. FENNING: Of course.

10 THE COURT: You've just explained to me that the
11 termsheet deal is either prohibited by or totally inconsistent
12 with the remedies section, including this SLV provision,
13 because the SLV provision contemplates and provides that Delta
14 can't keep the plane, and has to basically sell the plane, as I
15 recall, and remit the proceeds to the lenders. Is that part of
16 it?

17 MS. FENNING: Yes.

18 THE COURT: And --

19 MS. FENNING: There are several alternatives. That's
20 one of them. Yes.

21 THE COURT: Okay. So that if you're going to rely on
22 an SLV provision, then the termsheet deal is simply not
23 consistent with that at all, and even if there's a reference to
24 SLV, it cannot be SLV because this central element of SLV
25 simply isn't present here, correct?

1 MS. FENNING: Yes, Your Honor. That's exactly what I
2 was trying to say.

3 THE COURT: Okay. That's extremely helpful. I will
4 look back at the Tab 11, Exhibit 1, Page 2, and consider that
5 in light of what you've just articulated, and reconsider my
6 ruling on Page 15 on 182.

7 MS. FENNING: Your Honor, our response walks you
8 through the pertinent terms of the various operative documents
9 that relate to this issue, and gives you a road map for that
10 analysis.

11 THE COURT: That's right. And what tab number is your
12 response?

13 MS. FENNING: Your Honor, I don't have access to the
14 tab numbers. The debtor will have to tell you where they put
15 our response.

16 MR. HANSEN: Your Honor, it's Kris Hansen.

17 We'll find that tab for you. Just two points I wanted
18 to address with you when you're --

19 THE COURT: Okay. I will find it. I remember the
20 submission, Ms. Fenning, very well.

21 MS. FENNING: All right. Thank you, Your Honor.

22 THE COURT: Thank you. Go ahead, Mr. Hansen.

23 MR. HANSEN: Just a few points I wanted to bring to
24 Your Honor's attention while you're considering the issues
25 regarding Point (p) (sic) and Ms. Fenning's argument.

1 You know, the first one is, again, we live and die by
2 the language that's in this contract, and the contract says
3 pays, particularly the loss value were an amount determined by
4 reference thereto. So when we picked out that language, it's
5 extraordinarily important in this situation because again, when
6 you're entering into this termsheet, it is an amount that's
7 determined by reference to stipulated loss value; at least
8 that's the starting point.

9 The second point I just wanted to make, and again,
10 Your Honor, when you're looking at that, make sure that you
11 look at Section 15(g) of the lease, because it specifically
12 states that upon the occurrence of any event of default, the
13 lessor may exercise any right or remedy which may be available
14 under applicable law, made by appropriate actions to force the
15 terms, et cetera.

16 So it's our opinion that we do have the right, or
17 really, the indenture trustee has the right to do what it's
18 doing with respect to the termsheet, and entering into a new
19 agreement with us, and we do believe that those remedies are
20 available to the indenture trustee, especially in the situation
21 here, you know, where there is the defense, and then to default
22 (indiscernible) that has occurred and is continuing.

23 And then I guess the third point would just be that
24 obviously, with respect to your termsheet, parties are entering
25 into new restructuring agreements and new leases and

1 (indiscernible) documents (indiscernible) in furtherance of the
2 termsheet that Your Honor is expected to order, so we just
3 point those things out.

4 THE COURT: Okay.

5 MS. FENNING: And, Your Honor, if I may, just one
6 comment.

7 THE COURT: Sure.

8 MS. FENNING: We do not contend that the restructuring
9 agreements are somehow invalid contracts. Rather, what we are
10 contending is that they're not consistent with the operative
11 documents and, therefore, they don't trigger the exclusion or
12 the dissent, if you will, against the TIA claim that says it's
13 being paid under the SLV.

14 I mean, if the debtors' argument were correct, the
15 letters should say the SLV in the agreement called for a
16 payment of \$90 million. We are paying 90 million, minus
17 89,999,000; and, therefore, that's a claim by reference -- and
18 not by reference to SLV. That is not what these documents
19 contemplate. They have formulas that have provisions for
20 certain offsets, and that is what my reference to the -- and we
21 would ask you to consider that as you look at this issue again.

22 THE COURT: Yes. I was going to say that I didn't
23 think that what Ms. Fenning was arguing was any different, was
24 that the termsheet was unlawful or unenforceable, but rather it
25 simply didn't fall within the trigger phrase language for an

1 exclusion under Section 6(c), and I -- and you've said it very
2 well.

3 All right. I think I understand the issue. I will go
4 back and look at that again, and get something out on that.
5 Okay?

6 MR. SMOLEV: Your Honor, it's Richard Smolev.

7 Are we done with Objection 2? Because if so, I'd like
8 to move back to Objection 1.

9 THE COURT: Sure.

10 MR. SMOLEV: Thank you.

11 I have three comments, the first of which is the
12 easiest comment you're going to get on this phone call, which
13 is my name was left off of the opinion.

14 THE COURT: Oh, dear. I apologize.

15 MR. SMOLEV: That's okay. So that's one.

16 My other comments are directed to a finding that you
17 made at Page 10.

18 THE COURT: Okay.

19 MR. SMOLEV: And specifically, it's the paragraph
20 below the quoted item. At the end of that paragraph, you say
21 that the indenture trustee has demanded that Delta pay, and
22 Delta is required to pay SLV. I have two things to say,
23 because that's not true. That's not factually true. Three of
24 my tails are on the Bingham termsheet. So those three tails
25 are situated exactly as 182DN with respect to whether Delta is

1 paying SLV.

2 Now, in fairness, those are three tails where the
3 owner/participant interest was sold, and Wilmington Trust, in
4 its objection, raised that as a second defense, and you might
5 remember, we had a discussion when that point came up at the
6 March 30th hearing, where both Mr. Wiles and Mr. Elliott agreed
7 that that issue would be saved for another day.

8 So I don't want to comment on those three tails
9 without letting you know what will be coming, either in a
10 follow-on objection or, if you prefer, we can brief that in the
11 context of this objection. But three of my tails already are
12 on the Bingham termsheet, so it's our position that just as
13 182DN is on the Bingham termsheet and Delta is not paying SLV,
14 it's not paying SLV with respect to those three tails.

15 The second point deals with --

16 THE COURT: Wait a second.

17 MR. SMOLEV: I'm sorry. Yes, sir?

18 THE COURT: Let's just deal with that.

19 MR. SMOLEV: Sure.

20 THE COURT: You're right. I did not attempt to focus,
21 especially with regard to your client's situation, which I
22 found very mystifying, on the specific arguments that might be
23 made with regard to particular planes, because I thought that
24 you had at least one or two planes that -- as to which the
25 arguments you were making were applicable. Maybe you don't.

1 But that's the premise of the decision that I made.

2 Now, to the extent that three of your planes are
3 similar to, or in the situation covered by the termsheet, that
4 is the same termsheet that covers 182DN, obviously I would
5 decide -- well, wait a second. The language is different,
6 isn't it? 7(c) is different from 6(c).

7 MR. SMOLEV: My language is required to pay. There's
8 no "by reference to" (sic) in any of my tails. So my point is
9 simply that they are --

10 THE COURT: Well, I guess -- you know, I will
11 reconsider what I've written concerning 182DN and the
12 termsheet, but assuming that I don't change my view with regard
13 to 182DN and the termsheet, I would assume that all of you
14 would view that decision as applicable to any other tails that
15 are covered by the termsheet in the Bingham Group. Is that
16 what it is? The Bingham Group termsheet?

17 MR. SMOLEV: Well, yes, sir, but if I might, it goes
18 beyond that, because after the March 30th argument, we received
19 notice from the debtor, and the debtor filed schedules. Of its
20 plan schedules, 10.4(e), as in Edward, identified post-petition
21 restructuring agreements that the debtor has entered into. All
22 eight of the DFO tails are on that schedule, and in all eight
23 instances, Delta is retaining the aircraft, just as it is under
24 the tails -- under the Bingham termsheet, and I believe is
25 paying some amount for lease protection damages that, as Ms.

1 Fenning said, bears no relationship to the contract definition
2 or construction of SLV.

3 With respect to those tails, Mr. Wiles and I have been
4 discussing access to those restructuring agreements because I
5 do not have them and Delta has agreed to make them available to
6 me, and I agreed to ask Your Honor to allow us to file them
7 under seal, so that my reconsideration would be along the
8 grounds, not only with respect to those three tails that are on
9 the Bingham termsheet, but with respect to all of my tails,
10 there are now agreements to which Delta is a party, under which
11 it's keeping the aircraft, paying a lesser amount than SLV, and
12 I would be asking Your Honor to make the ruling in the context
13 of facts which we just didn't have as of the March 30th
14 hearing.

15 THE COURT: Well, two points. One, you know, I don't
16 really do ceiling. You do the ceiling. Somebody else does the
17 ceiling. All I care about is that I get the documents in full
18 text that I need to decide motions. So get me documents in
19 full text that you want me to look at, and if you want to put a
20 big stamp on them that says, document filed under seal, fine,
21 but at least give me the document. I'm not helped by having
22 exhibits in a binder that basically say, document withheld
23 under seal, or something like that. That's point one.

24 MR. SMOLEV: As soon as I get the documents, I will,
25 Your Honor. Thank you.

1 THE COURT: Point two, absolutely my decision is
2 addressed only to the points that I've addressed, and if you --
3 if it turns out that you have eight planes, tails, whatever you
4 call them, that fall under the rationale of what I wrote
5 concerning 182DN, why, you know, unless I'm persuaded to change
6 my views on 182DN, which I might be, or your facts are a little
7 different from the 182DN facts, yes, I would expect to rule in
8 the same way, and I would expect you to bring those to me if
9 it's still an issue that's open for litigation. I realize that
10 everybody has the right to appeal from my rulings, but the
11 rulings that I make for 182DN are going to be the same rulings
12 I'm going to make on planes that are subject to the same
13 termsheet, and don't have some other facts that would dictate a
14 different result.

15 Now, as far as the fact that Section 7(c) is worded
16 differently from 6(c), I'm not sure that's going to make any
17 difference with regard to the 182DN termsheet situation, but
18 I'd be happy to hear argument or briefs on it.

19 But oh, by all means, bring those matters to my
20 attention if you feel that what I've written here doesn't cover
21 your situation.

22 MR. SMOLEV: We will, Your Honor. Thank you very
23 much. That concludes the points for which DFO will be asking
24 for reconsideration with respect to Objection No. 1.

25 THE COURT: Okay. I really considered that I've dealt

1 only with three issues. One is the so-called cosmic argument,
2 and I think that is going to cut across all of the lines. My
3 view is that the contracts control, and that a generalized rule
4 of law is not going to be applied by me, anyway, to -- in a
5 manner that is inconsistent with what the contracts say. So I
6 will be governed by the contracts.

7 As to -- the second point is that Section 7(c), I've
8 ruled on my views as to 7(c), and I've ruled on my views as to
9 Section 6(c), and I've given you my views with regard to the
10 termsheet airplanes, unless there are some facts with regard to
11 other planes that may be subject to the termsheet that I really
12 need to factor into my thinking. And, of course, unless I
13 change my mind and realize that I've gone off the spoon on 182.
14 I don't think so, but I'm going to definitely look at it.

15 Anything else?

16 MS. FENNING: Your Honor, this is Lisa Fenning.

17 May I inquire whether the notebooks that were provided
18 to you did include the operative -- unredacted, operative
19 documents for TIA 2? As a creditor, we have no knowledge of
20 exactly what notebook was provided, and I want to verify that
21 before you look at these issues again, that you do, in fact,
22 have, at your fingertips, all of the operative documents that
23 were submitted for TIA 2.

24 THE COURT: Let me put it this way. I did have all
25 the operative documents annexed to one of the responses on

1 Objection 1. I think I did, anyway. I think I may not have
2 had the entirety of the documents on Objection 2, although
3 maybe I did, but I can tell you this. I did focus very
4 carefully on the specific provisions that were brought to my
5 attention in the papers.

6 MS. FENNING: The only question, Your Honor, is
7 whether we should submit another copy. I do intend to file a
8 motion for reconsideration and address the Travelers issues
9 separately with respect to how it directs -- the contracts
10 ought to be interpreted and applied in bankruptcy, and will
11 submit an appropriate set of papers on that.

12 But I just wanted to make sure whether you wanted me
13 to submit another set of the operative documents in connection
14 with that, or whether you already had those available, as you
15 look at these issues again.

16 THE COURT: Well, I probably don't. It is the
17 practice, in my chambers, to discard motion papers because
18 otherwise, we would be moving around our office in little
19 runnels between tall stacks of documents that nobody could find
20 anymore. We have too much paper on too many cases to keep
21 anything, really. So I guess that answers your question.

22 MS. FENNING: I'll be happy to resubmit the action.
23 Thank you, Your Honor.

24 THE COURT: Okay.

25 MR. EDELMAN: Your Honor, this is Mike Edelman from

1 Vedder Price.

2 THE COURT: Yes, sir?

3 MR. EDELMAN: Earlier in the conversation, I believe
4 that the debtors raised that they felt that your decision
5 hadn't addressed the SLV objections, and as I said earlier, I
6 thought your decision had, and I think your decision,
7 interspersed on 11 and 12, where you said that the -- there is
8 no basis for the objection to the SLV, that is undisputed, that
9 at the end -- I'm trying to look at the language, but -- so you
10 basically dismissed the objection to the SLV claim and I
11 believe the rationale was that because prior to the time on the
12 SLV claims arose, which was bankruptcy filing, there were -- no
13 J claim had been asserted.

14 THE COURT: Yes. I recall that.

15 MR. EDELMAN: I just wanted to -- I don't think you
16 set that forth in your list of three items.

17 THE COURT: Okay. Well, I guess the bottom line is
18 that in terms of what was before me, objections to SLV claims
19 were overruled. I believe that's the -- that was my
20 conclusion.

21 MR. EDELMAN: Yes.

22 THE COURT: All of the objections to SLV claims that
23 were before me have been overruled.

24 MR. WILES: Your Honor, just a clarifying question.

25 And it's Michael Wiles. I'm looking at Page 12 and I agree, on

1 the DFO claims, where you struck all of the TIA claims, you
2 said that Section 7(c) of the TIA is applicable, and Section
3 8(c) of the participation agreement is not. I understood that
4 to mean that Section 8(c) of the participation agreement was
5 not applicable because there was no TIA claim to begin with.

6 THE COURT: Right.

7 MR. WILES: The question Mr. Hansen was raising about
8 the participation agreement adjustment provisions is if your
9 position stays the same on 182DN, where you did not strike the
10 TIA claim --

11 THE COURT: Well --

12 MR. WILES: -- then we don't have to get to that
13 issue.

14 THE COURT: Is there an objection to -- I don't think
15 there's any objection by Delta to the claim based on the
16 termsheet in 182DN. Is there?

17 MR. WILES: You know, Your Honor, there's no
18 objection. There is to the extent of the overlap. There is on
19 the Section 8(c) of the participation agreement
20 (indiscernible).

21 THE COURT: Well, okay. I didn't understand that. I
22 allowed -- I overruled the objection with regard to 182DN of
23 the TIA claim. To the extent that that means that Delta is
24 objecting to its termsheet agreement, to the claim based on its
25 termsheet agreement on 182DN, I guess I would overrule that,

1 since my understanding is that it is, in fact, not an SLV
2 claim, it's a termsheet claim.

3 Now you have said that I'm wrong and that I have to --
4 do you want me to go back and look at Tab 11, Exhibit 1, Page
5 2, and look at the references to SLV, and I will do that. But
6 if I -- if the bottom line is that I don't change my view with
7 regard to 182DN, then certainly, as it is implicit, and I can
8 make it explicit, that any objection to the claim that results
9 from Delta having agreed to and stipulated to a claim under a
10 termsheet, that's overruled. I didn't understand that there
11 was any.

12 MR. BOTTER: Your Honor, it's David Botter from Akin
13 Gump, and hopefully Mr. Hansen might have a reference, but in
14 the termsheet that you approved in February, which we all refer
15 to as the Bingham termsheet, both the debtors and committee
16 reserved all of their rights to object on the overlap grounds
17 identified by Mr. Wiles. So while there may have been the
18 agreement as to how you would calculate the claim by reference
19 to SLV, the reservation was specific as to this particular
20 issue.

21 THE COURT: Well, you know, you're going to have to
22 brief that. If it's anything -- you're going to have to brief
23 the argument if the argument is based on anything other than
24 the cosmic argument, because I don't know what your argument
25 is, and I haven't -- I'm sorry, I just haven't focused on your

1 argument to the extent that your argument, on the Bingham
2 termsheet plane, 182DN, is anything other than a cosmic
3 argument.

4 UNIDENTIFIED: Your Honor, what would be the course of
5 preference? What's the most useful and helpful way we can
6 address all these issues for you? Would you like additional
7 submissions on some of the points, all of the points?

8 THE COURT: As I said before, I have never declined an
9 opportunity to reconsider or reargue, whatever you want to call
10 it. I always grant motions to reargue. I might not change the
11 outcome, but I will always hear the merits of anybody's request
12 to reconsider because the plain fact is, maybe I didn't get it
13 the first time around, and I'm grateful for an opportunity to
14 reconsider.

15 MR. SMOLEV: Your Honor, it's Richard Smolev. Might I
16 ask a scheduling question?

17 THE COURT: Yes.

18 MR. SMOLEV: Would the Court prefer to set a date by
19 which we all file whatever papers we want to file, and then a
20 simultaneous response date, or would you prefer that we do
21 separate motions for reconsideration?

22 THE COURT: Gosh, you know, I would like you to do
23 whatever is easiest for you. I really -- I don't care.

24 I don't know that it's going to be -- if you think --
25 unless I've really clearly overlooked something in your papers,

1 I have considered the arguments rather carefully that I have
2 addressed in -- from Page 13 on, with regard to number two.
3 Anybody is welcome to ask me to reconsider that. I don't think
4 my view is going to change, but as I said, I'm happy to hear --
5 I'm happy to read anything you'd like to put before me very
6 concisely, and to the extent that you need me to look at
7 specific agreements in toto again, annex them, whether they're
8 sealed or not, okay?

9 MR. ELLIOTT: Your Honor, if I could, this is Mark
10 Elliott with Bingham. We represent certain SLV claimants on
11 Objection No. 1.

12 We will not be making a motion to reconsider because
13 we believe that, Your Honor, our Objection 1, both with respect
14 to the inclusion clause in the TIA, as well as your
15 interpretation of the relevant clause in the participation
16 agreement, got it exactly right, but we would request the
17 opportunity to respond to any reconsideration motion.

18 And in that regard, with respect to Mr. Smolev's
19 comments, regardless of whether or not Your Honor may change
20 his opinion or not with respect to 182, the language of Section
21 7(c), exclusion clause relevant to Objection No. 1, your
22 decision was based on that explicit language of SLV being
23 required to be paid, or required to pay, rather, which was
24 triggered by certain lease events, which event was the default
25 under the lease, which did occur here.

1 So regardless of how Your Honor sees the termsheet and
2 its interaction with Objection No. 2 and that language, there's
3 no question that under Objection No. 1, that inclusion clause
4 applies because of how Your Honor correctly interpreted that
5 lease and we, of course, would want the opportunity to respond
6 to any reconsideration of that.

7 THE COURT: Okay. Well, let me suggest this. I'm
8 going to be away for about a week and a half. Let me suggest
9 that on whatever schedule you like, but probably the sooner the
10 better, anybody that wishes for me to reconsider anything, or
11 that needs me to function on some issue that is within the
12 scope of Objections 1 or 2 that I didn't address, such as, for
13 example, the -- whatever it is, five tails or eight tails that
14 Mr. Smolev referred to, that he says are termsheet -- Bingham
15 termsheet planes.

16 Lay it out for me very tersely and concisely, and make
17 sure that you bring to my attention issues that I have not
18 addressed, that you need me to address. Okay?

19 MR. SMOLEV: Absolutely. On behalf of DFO, thank you,
20 Your Honor.

21 MS. FENNING: Your Honor, we will do so on behalf of
22 Northwestern Mutual, but let me just clarify something. No
23 order has been entered on the objection, technically. The
24 appeal here is not yet triggered, which means that while we can
25 reach agreement, we don't have to worry about a ten-day appeals

1 period, as I understand the situation.

2 THE COURT: Oh, no. I think that the appeal period --
3 let's wait until -- let's not have any order until you all are
4 persuaded that I'm either going to be right or wrong, but
5 you're not going to change my mind.

6 MS. FENNING: I just was seeking clarification, to
7 make sure we all are on the same page.

8 THE COURT: Oh, quite so.

9 UNIDENTIFIED: I agree with that a hundred percent.

10 MR. CROWLEY: Your Honor, it's Leo Crowley for the
11 Bank of New York, on Objection No. 2.

12 As to two of the aircraft on that objection, I haven't
13 heard anything about a motion for reargument, but I'd like to
14 ask Your Honor to sever the objection as it relates to those
15 two aircraft.

16 MS. FENNING: Mr. Crowley, this is Lisa Fenning. I
17 indicated I do intend to file a motion to reconsider as to all
18 of the Northwestern Mutual claims.

19 MR. CROWLEY: I didn't hear anything about anything,
20 other than N182, actually.

21 MS. FENNING: I mean, I like N182. I'm not asking for
22 reconsideration of that ruling. I am seeking a reconsideration
23 on the other.

24 MR. CROWLEY: Your Honor, in that case, I haven't
25 heard any basis for reconsideration. I'm going to ask for a

1 final order on that because we've got tens of millions of
2 dollars of distributions on those tails being held up by Delta,
3 and a resolution of this issue. I'm going to ask for a final
4 order on that. I don't think I should have to wait for
5 completion of the motion or reargue.

6 MS. FENNING: Your Honor, the issues are intertwined.
7 As I've indicated, I believe that Travelers Insurance, which
8 came down just days before our hearing and after we had an
9 opportunity to brief, should be considered, and that certain
10 parts of the opinion should be reconsidered in light of that
11 ruling. And I would appreciate the opportunity to brief it
12 because it does have a very broad scope and effect.

13 MR. CROWLEY: Your Honor, the reason I seek a final
14 order is my underlying bondholders are exposed to market risk
15 on Delta stock.

16 THE COURT: Right.

17 MR. CROWLEY: And if I have a final order, and if Ms.
18 Fenning wants to move for a stay pending appeal, and if she
19 wants to post on behalf of her clients, undertaking, securing
20 us against the risk of Delta stock declining in value, then
21 that's fine.

22 MS. FENNING: Mr. Crowley, a motion for
23 reconsideration would say that, in any event, and it's my
24 intention to file it, so I don't know what would be served by
25 issuing a separate order prior to that, on that issue.

1 MR. BOTTER: And, Your Honor, there is no integral
2 distribution case contemplated by the plan of reorganization
3 that you confirmed in this case, which was (indiscernible).

4 THE COURT: Say that again. I didn't get it.

5 MR. BOTTER: Your Honor, this is the same issue that
6 we addressed on an emergency basis with respect to the Bingham
7 (indiscernible), and Your Honor said bring a motion, which was
8 (indiscernible) never brought -- it was brought with respect to
9 certain (indiscernible) of the plan contemplates interim
10 distribution. The initial distribution was with respect to
11 claims that are allowed as of the effective date. With respect
12 to claims that are just viewed -- just like any other claims
13 that are disputed, Mr. Crowley has disputed claims, they would
14 be resolved as they're resolved. And ultimately, there are
15 interim distributions set up in the plan for six months from
16 now. So it seems to me that there's plenty of time, and Mr.
17 Crowley would not have the opportunity to get any sort of
18 distribution, absent an amendment to the plan of
19 reorganization.

20 UNIDENTIFIED: Well, we're going to move to have the
21 claim allowed, Your Honor, based on this ruling. And as soon
22 as it were paid, it would be six months from now or six months
23 from the initial distribution date, which I believe was May 1st
24 or April 30th.

25 MR. CROWLEY: But that's not the way we read the plan.

1 UNIDENTIFIED: And that's also a subject that we have
2 a motion on file with the Court.

3 UNIDENTIFIED: That's a whole different --

4 THE COURT: Excuse me. I'm sorry. Who is it that
5 wants an immediate order?

6 MR. CROWLEY: Leo Crowley, Your Honor, with respect to
7 tails and 803DE and 804DE.

8 THE COURT: Okay. I don't deal too well with tails.
9 Are you an SLV claim, or a TIA claim?

10 MR. CROWLEY: SLV claim, Objection No. 2. It's two
11 out of three aircraft on Objection No. 2. It's an SLV claim.

12 THE COURT: It's an SLV claim.

13 MR. CROWLEY: Right.

14 THE COURT: Who objects to the outcome on the SLV
15 claim? Nobody.

16 MS. FENNING: Your Honor --

17 THE COURT: I mean other than the debtor. The debtor
18 disagrees, I guess.

19 MR. BOTTER: As does the creditors' committee, Your
20 Honor.

21 THE COURT: Okay. But this is -- the only objection
22 to the SLV claim, putting aside the termsheet -- we're not
23 talking about the termsheet claim, are we?

24 MR. CROWLEY: We are not.

25 THE COURT: We're talking about a real SLV claim,

1 right?

2 MR. CROWLEY: That is correct, Your Honor.

3 THE COURT: Well, why shouldn't Mr. Crowley have an
4 order on that, because the only objection to the SLV claim was
5 basically the cosmic argument, right?

6 MS. FENNING: Your Honor, if I may, this is Lisa
7 Fenning.

8 We will be seeking reconsideration on the TIA claim,
9 and the concern, I believe, is that if our -- if the TIA ruling
10 has changed, you know, that the objection is overruled with
11 respect to those two tails, then if Mr. Crowley is allowed to
12 go ahead and get paid, then there would be no opportunity to
13 consider whether the adjustment issue is right because after
14 the TIA claim is allowed, if it is eventually allowed --

15 THE COURT: No.

16 MS. FENNING: And the two, I think, are linked
17 together and I would suggest that there is agreement that the
18 debtor and the committee, so to speak. We would believe that
19 it's appropriate to consider the whole thing as a package,
20 because it may -- if you do change your mind and allow the two
21 TIA claims with respect to liability, then you may reconsider
22 the question of whether the SLV adjustment is necessary and
23 appropriate.

24 THE COURT: The only basis on which I might reconsider
25 the SLV claim would be the cosmic argument, and I am not

1 changing my views on that. The only other basis would be 8(c),
2 but 8(c) is not applicable, in my view, and I've ruled that,
3 and that is my view, whether or not I end up changing my views
4 on whether 7(c) bars a claim under the TIA. I don't believe
5 there's any chance that I'm going to be changing my views on
6 that.

7 MS. FENNING: If I may clarify, Your Honor, as to
8 these tails, it's 6(c) in the TIA inclusionary language,
9 it's --

10 THE COURT: Oh, you're talking about Objection 2.
11 It's 6(c).

12 MS. FENNING: Yes, Your Honor. Okay. I just wanted
13 to make sure --

14 THE COURT: Yes. No, I'm sorry. I was in the
15 wrong --

16 MS. FENNING: Okay, but I do not anticipate any
17 circumstance under which I would change my view that the
18 objection to the SLV claim in Objection 2, claim or claims,
19 with regard to whatever airplanes are covered, I don't see any
20 basis under which I would change that conclusion, namely that
21 the objection to the SLV claims, as opposed to the Bingham
22 termsheet claims, is overruled, and the reason for that is,
23 number one, the cosmic argument fails, as a matter of law, in
24 my view, as any basis to bar or reduce SLV claims.

25 Secondly, the analog for 8(c), under the participation

1 agreement in Objection 2, whatever it is, assuming that it is
2 substantially the same as 8(c) in Objection 1, is not the kind
3 of reduction to the SLV claim that would result where
4 previously there's a TIA claim which then results in an 8(c)
5 type reduction in SLV. I'm not aware that there is any such
6 fact here. Okay?

7 So I don't see why the overruling of the objection to
8 SLV claims in Objection 1 and 2 should not result in an
9 immediate order, because I cannot imagine any circumstance
10 under which I would change that ruling. And it obviously does
11 matter, at least to the holder of SLV claims.

12 So is there any reason why, given the attitude that
13 I've just expressed on the SLV claims, those should not be
14 allowed now, and an order entered appropriately?

15 MR. WILES: Your Honor, this is Michael Wiles. I have
16 one procedural question that I haven't thought all the way
17 through, but it might make it a problem.

18 As it stands right now, let's say we had to issue a
19 separate order with regard to the SLV. On claims where you
20 have presently ruled that our TIA claim goes away, in that
21 posture, I do not believe the debtors and the committee would
22 have a right to appeal because the orders and decision on file
23 would be in their favor as to the ultimate result.

24 THE COURT: Right.

25 MR. WILES: In other words, the TIA claim would go

1 away. If you separate them and you allow the SLV claim and
2 then reconsider and then rule later on the TIA claim, it
3 creates a risk that if you were to change your mind on the TIA
4 claim going away, that the time to appeal would have expired on
5 the SLV claim, and that's a potential prejudice to the debtors
6 and the committee.

7 THE COURT: Well, I do see that. What's the answer to
8 that? I will say that I envision almost no likelihood -- I
9 can't really envision any likelihood that I will change my view
10 on the TIA claims, on Objections 1 and 2.

11 Having said that, you're right. You put your finger
12 on a problem. I don't know that it's a real problem.

13 MR. SMOLEV: Your Honor, this is Richard Smolev. I
14 ask you not to pre-judge, particularly inasmuch as on all eight
15 of my tails now, Delta has the aircraft and the Court should
16 respectfully keep an open mind to determine if what it's paying
17 is SLV, because it very well may be that the facts now don't
18 support what the debtor is suggesting.

19 THE COURT: Now, this is Mr. Smolev?

20 MR. SMOLEV: Yes, sir.

21 THE COURT: And you're now talking about the fact that
22 you're now telling me that all of your planes may be covered by
23 my ruling on 182DN.

24 MR. SMOLEV: Yes, sir.

25 THE COURT: And what is that? Objection 1?

1 MR. SMOLEV: My tail, yes. My tail is in Objection 1.
2 Three of them are on the Bingham termsheet. Five of them, --
3 and the other five, so all eight are now subject to
4 restructuring agreements. And the --

5 THE COURT: Okay. I take your point. I take your
6 point. It's kind of too bad not to have had that information.
7 Maybe I did have it and it went over my head.

8 MR. SMOLEV: No, no, no. You didn't, Your Honor,
9 because the debtor did not file the schedule until after the
10 March 30th hearing, and I was completely in the dark about
11 those negotiations because I wasn't a party to them. And those
12 are purely between Delta, on the one hand, and the SLV parties
13 on the other, so I could not have brought them to your
14 attention, nor could you have known about them because Delta
15 didn't file Schedule 10.4(e) until the eve of confirmation.

16 THE COURT: Well --

17 MR. ELLIOTT: Your Honor, this is Mark Elliott. Mr.
18 Smolev is incorrect in a sense that he pointed out in his
19 brief, and we opposed it, that he pointed out that these were
20 termsheet planes, and we certainly talked about the fact that
21 they were termsheet planes. That doesn't change Your Honor's
22 ruling, as I pointed out before, because the language, the
23 critical language difference in Objection 1 excludes
24 (indiscernible), makes a great deal of difference because Your
25 Honor ruled as you did, I believe, because to -- with the event

1 of default under the lease, Delta was required to pay SLV.

2 What the parties may have done subsequently, in terms
3 of this agreement, which Your Honor so ordered, doesn't change
4 the fact that the event -- the lease event, whereby Delta was
5 required to pay SLV, didn't transpire, and that was the basis
6 of your ruling, I believe, Your Honor.

7 So with all due respect to Mr. Smolev, he did know
8 this was termsheet, this was litigated, and I believe Your
9 Honor properly decided it.

10 THE COURT: Okay. Well, it may be that I should have
11 decided it and should have realized it, but I didn't. So, Mr.
12 Smolev is correct. That remains open, as far as I'm concerned,
13 because I just didn't focus on it. Sorry.

14 MR. SMOLEV: Thank you, Your Honor. I don't think --
15 Smolev is talking.

16 I don't think we're going to raise anything else in
17 this call with respect to TIA/SLV Objection 1, unless the Court
18 has any questions.

19 THE COURT: Well, what this leaves, then, with regard
20 to Mr. Crowley's point, is only what? A couple of airplanes
21 with respect to which I overruled an objection to their SLV
22 claims, and there's -- am I right, there's really nothing left
23 to litigate on that?

24 MR. EDELMAN: Your Honor, this is Mike Edelman and
25 Vedder Price. I think that on Mr. Crowley's suggestion, I

1 think it would be applicable to all the SLV claims.

2 THE COURT: Well, not -- you mean all the SLV claims
3 in Objection 2?

4 MR. EDELMAN: Well, I think he said that the two bases
5 for objection of the SLV, you thought that those were dead
6 issues, that there's no cause for argument and that since
7 there's no pre-existing TIA claim at the time of the SLV claim
8 arose, that the adjustment provision in the participation
9 agreement just is not applicable, and that applies to every SLV
10 in Objections 1 and 2.

11 THE COURT: Well, no. We're repeating ourselves here.
12 Mr. Smolev has said that there is a ground for changing my
13 ruling with regard to TIA because there's a Bingham termsheet
14 argument with regard to Objection 1 that I didn't focus on,
15 right Mr. Smolev? Right or wrong?

16 MR. SMOLEV: Yes, sir. That is correct, Your Honor.
17 Thank you.

18 THE COURT: So that being the case, I have to
19 entertain that argument, which may change the ruling, it may
20 not, with regard to TIA. In Objection --

21 MR. EDELMAN: I would think, for the final order for
22 the SLV, that's all I was saying, that that suggestion that
23 these are applicable to all the SLV claims, that's all I was
24 saying.

25 THE COURT: Oh, I see. All the SLVs?

1 MR. EDELMAN: Yes.

2 MR. WILES: The problem is a procedural issues that I
3 pointed out, though, Your Honor, this is Michael Wiles, is
4 still there. Unlike everybody else, I don't really want to
5 argue the merits of all this. I'm happy to get some papers
6 from you to point out our position, but I don't -- it may sound
7 superficially appealing to enter a separate order, but the
8 objection is based on the whole idea that one of them has to go
9 away, and in the context that we stand right now, we can't
10 really enter a separate order without prejudice to the debtor.

11 THE COURT: What's the answer to that?

12 MR. CROWLEY: This is Leo Crowley, Your Honor.

13 I don't see what the prejudice is, frankly, because
14 they never -- as I read the objection just now, I haven't seen
15 them really objecting to the SLV claim on those two aircraft.
16 The objection was to the TIA claim, and you overruled it.

17 MR. WILES: That's just not true. (Indiscernible.)

18 MR. CROWLEY: Looking through their reply here, it
19 says:

20 "Point C of the TIA claim should be extinguished due
21 to the distribution that will be made to the holders
22 of the SLV claims."

23 MR. WILES: Yes, and in the alternative, what --

24 MR. CROWLEY: I'm looking for "in the alternative,"
25 and I don't see it.

1 THE COURT: But, Mr. Wiles, the objection to the SLV
2 claim would be either the cosmic argument -- well, basically,
3 it would be the cosmic argument, wouldn't it? Or an 8(c)
4 argument?

5 MR. WILES: It would be both of those. That's
6 correct.

7 MR. CROWLEY: Well, Your Honor, Leo Crowley.

8 The cosmic argument, I think you've indicated that you
9 don't want to talk about it anymore, frankly, on these two
10 aircraft, the lease was rejected, as before, we discussed in
11 the oral argument, the lease was rejected at the beginning of
12 the case, so I don't see any basis for invoking any adjustment
13 mechanism on it at all.

14 Now I think these are the -- with respect to Mr.
15 Edelman, I mean, I think these two aircraft are in a unique
16 position. I think there is a basis for finality as to these
17 two right now, and ultimately, as I said before, we'll be
18 seeking a prompt distribution on account of these. The party
19 who agreed by the request for prompt distribution need to
20 persuade you not to order them, or they can put up an
21 undertaking, pending appeal.

22 THE COURT: Why is that not so?

23 MR. WILES: What's not so, Your Honor?

24 THE COURT: Why is it not so that you can protect your
25 rights --

1 MR. WILES: Well, let's say we have an order on those
2 planes in favor of Mr. Crowley's client, and at the moment,
3 your decision is in Delta's favor on the TIA claims, with
4 respect to the -- the relief Delta sought was that one of the
5 two claims should be adjusted or should go away, and at the
6 moment, we would be in a position where you would rule in
7 Delta's favor, throwing out one of the claims.

8 But, by entry of an order with respect to Mr. Crowley,
9 it would start the appeal time running at the same time that
10 you're reconsidering your order with respect to the TIA claim.
11 So what happens if you change your mind?

12 I think that there's a serious risk that I would have
13 a right to appeal, because you can only appeal if the
14 underlying judgment is against you, and as things would stand
15 on the record, the relief Delta requested would have been
16 granted. The order wouldn't have been finalized, but the
17 relief entered would be in favor of Delta.

18 But if part of that being reconsidered, you can't
19 start the appeal time running on the other part. It's just not
20 fair to Delta.

21 MR. CROWLEY: I don't -- this is Leo Crowley, Your
22 Honor.

23 I'm not sure we really heard much of a basis for
24 reconsideration on this one, to tell you the truth, which is
25 what prompted me to ask for finality, and I think given that

1 -- you know, I come back to the proposition of the party who
2 has prevailed in litigation, as we have, is entitled to
3 finality and the benefits that go with finality.

4 THE COURT: Well, let me ask you this, Mr. Crowley.
5 If I sign an order allowing your claim and overruling the
6 objection to it in respect of SLV on these claims, and Mr.
7 Wiles were to file an appeal, would you then argue, oh, you
8 can't file an appeal because you won?

9 MR. CROWLEY: Your Honor, I think that's right. On
10 this one, he did prevail.

11 THE COURT: But his point -- his point is that I might
12 change my mind on the TIA. He knows I'm not going to change my
13 mind on the cosmic argument, but I might change my mind and
14 rule that TIA can be paid, in which case he is aggrieved,
15 because he was objecting and saying there had to be an
16 allocation. You can't pay them both. Would you then argue --
17 no, you can't preserve that argument because at the time,
18 within the ten days, you won.

19 MR. CROWLEY: No. I mean, I think if you ultimately
20 entered a later order of the type you're describing, which I
21 have to say I think is virtually inconceivable, the entry of
22 that order, if he's aggrieved by it, would be final at that
23 time, if he's aggrieved by it.

24 But, you know, as a prevailing party now, I think I'm
25 entitled to whatever benefits there are associated with

1 finality, and one such benefit is using this as a stepping
2 stone to move to compel distribution.

3 I mean, the flip side is having prevailed in this, if
4 I move at this point, for me it allows this claimant to compel
5 distribution, he's going to come back and say there's no
6 finality in the TIA litigation. I mean, I can only move
7 forward one step at a time.

8 MR. WILES: It's not a final order, anyway, until the
9 appeals are exhausted.

10 THE COURT: Yeah.

11 MR CROWLEY: (Indiscernible.)

12 MR. WILES: That's what the plan -- that's how the
13 definition is (indiscernible).

14 UNIDENTIFIED: Your Honor, maybe this counts for a
15 very fast process on the reconsideration, because if --
16 obviously, the estate is essentially aggrieved, as Mr. Wiles
17 pointed out, in that once the reconsideration is considered,
18 then you are gong to get -- we -- I (indiscernible) so we could
19 get to the place where, in fact, Mr. Crowley can't file an
20 order and the estate can do whatever it is that it wishes to do
21 in connection with its appellate rights.

22 THE COURT: Let me ask you this. Who is going to ask
23 for a re-hearing with regard to my ruling on TIA in -- what,
24 Objection 2?

25 MS. FENNING: Your Honor, this is Lisa Fenning on

1 behalf of Northwestern Mutual.

2 We will be filing a motion for reconsideration with
3 respect to the claim. I understand you have not given me a
4 whole lot of hope for persuading you otherwise, but you've also
5 invited us to take a shot --

6 THE COURT: Yeah.

7 MS. FENNING: -- and we do believe we have grounds.

8 MR. HANSEN: Your Honor, it's Kris Hansen at Stroock.

9 I mean, to the extent that we want you to reconsider
10 Section (indiscernible) in your ruling, we would file a motion
11 for reconsideration on behalf of the debtor with respect to
12 Point (c) (sic).

13 THE COURT: You know, well, look, Mr. Crowley. I
14 think we'll -- let me come back to this when we talk about
15 scheduling. I think it would be appropriate for any request
16 for reconsideration to be on my -- in my chambers by a week
17 from this Friday. Any problem with that?

18 MR. WILES: Not on behalf of the debtors, Your Honor.
19 I think that's fine.

20 THE COURT: Okay. Together with, you know -- I want
21 you to quote from any documents and if you want to have the
22 entirety of any of these documents before me, give me copies.
23 I'm sorry that I won't -- I don't still have them. Okay.

24 MR. SMOLEV: Your Honor, excuse me. It's Richard
25 Smolev. Because the restructuring termsheets are not in my

1 possession, and I'm dependent upon Mr. Wiles to get them, I can
2 only comply with that schedule if I have the documents in
3 advance and right now, all we have is an agreement. I have not
4 done a motion to compel. I don't now if you want to direct the
5 debtor to provide me those documents by a date certain. I
6 don't know, Mr. Wiles, if even that's necessary --

7 THE COURT: Okay.

8 MR. SMOLEV: -- if you can get the documents in the
9 next day or two.

10 THE COURT: That's Objection 1, right?

11 MR. SMOLEV: Yes, sir.

12 MR. WILES: I've told you, Richard, I'll get them to
13 you --

14 MR. SMOLEV: Okay.

15 MR. WILES: I will honor that.

16 MR. SMOLEV: All right. Thank you. All right. We'll
17 leave it at that for now, Judge.

18 THE COURT: Okay.

19 MR. SMOLEV: And if there's a hang-up on time, I'll
20 advise chambers.

21 THE COURT: All right. I will look at these, any
22 requests for reconsideration, very promptly. Including, by the
23 way, the debtors' request for me to reconsider on 182DN, right?

24 MR. WILES: Yes.

25 THE COURT: That's the debtors' request, isn't it?

1 MR. WILES: That's correct.

2 UNIDENTIFIED: Yes, Your Honor.

3 THE COURT: All right. Well, you do a brief
4 submission. Annex the Tab 11 document that you want me to look
5 at, and I will function on that very swiftly, and I'll probably
6 function on all of these the following week, early in the
7 following week, and if I want submissions -- reply submissions
8 to any of these motions, I'll let you know before I do
9 anything.

10 If I am at all disposed to grant reconsideration and
11 change my views on any of these, I will certainly ask for
12 responses. Otherwise, I won't burden you with a request for
13 responses. Do you all understand?

14 MR. WILES: Yes.

15 THE COURT: In other words, it won't be necessary to
16 reply to motions for a re-hearing or reconsideration unless I
17 request it.

18 Okay? And then, Mr. Crowley, hopefully I'll have a
19 situation where I can give at least you a final order with
20 regard to your SLV claims in Objection 2.

21 MR. CROWLEY: Thank you, Your Honor.

22 THE COURT: Okay? Anything else?

23 MR. WILES: Have a safe trip, and enjoy wherever
24 you're going.

25 THE COURT: Okay. Thanks a lot.

1 MR. WILES: Thank you.

2 THE COURT: My --

3 MR. EDELMAN: Your Honor, just one last thing. This
4 is Mike Edelman from Vedder Price.

5 THE COURT: Yes?

6 MR. EDELMAN: Earlier in the conversation, I think
7 Wiles said that there's going to be a June 6th status
8 conference on the -- on all the other SLV/TIA (indiscernible).

9 UNIDENTIFIED: We don't need that date anymore.
10 That's (indiscernible).

11 MR. EDELMAN: Given the reconsideration, I was going
12 to suggest maybe it would be (indiscernible).

13 UNIDENTIFIED: Yeah. I agree with that. I set that
14 date earlier this morning, Your Honor, but I think after this
15 conversation, which was a lot more detailed than I thought it
16 would be, it just wouldn't make sense to have a
17 (indiscernible).

18 THE COURT: Okay.

19 (Counsel speak simultaneously.)

20 THE COURT: That's fine. You can reschedule that.
21 Just so you're aware, if emergencies come up and you need to
22 have the Court function on anything when I'm away, let Rosemary
23 DeSalvo know, because she can reach me, or you can take it to a
24 Judge in New York if you want, but I frequently hear things
25 when I'm away. I prefer not to, obviously, but I always will

1 if it's needful, to have anything heard when I'm away. I'll
2 hear it. Okay?

3 UNIDENTIFIED: Your Honor, one other objection. There
4 isn't going to be a generalized SLVJ conference. Maybe June
5 6th would be a good idea to have it, just for these one and two
6 cases. It's just a suggestion, and it seems like it might be
7 an appropriate time.

8 THE COURT: I think I'd better call you and let you
9 know, because I'm going to function very quickly, but I may or
10 may not be able to function by the 6th. But I certainly hope
11 by the end of the week, to be able to. All right?

12 COUNSEL: Thank you, Your Honor. Thank you very much.

13 THE COURT: Thank you all.

14 COUNSEL: Thank you, Your Honor. Thank you, Judge.

15 THE COURT: Good day.

16 (Proceedings concluded at 6:16 p.m.)

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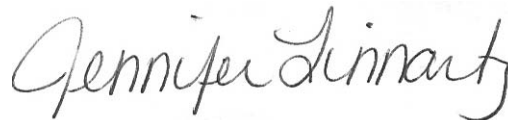
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CONDITIONAL CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter produced to the best of my knowledge and ability.*



May 23, 2007

Jennifer Linnartz, AAERT Cert. No. 339
Certified Court Transcriptionist
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*Telephonic comments and arguments of counsel not adequately recorded.